

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

In the Matter of:

LKQ CORPORATION, AND  
LKQ SOUTHEAST, INC.,

Respondents.

Docket No. CWA-04-2022-0307(b)

**CONSENT AGREEMENT**

**I. NATURE OF ACTION**

1. This is an administrative penalty assessment proceeding brought under Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2) (B), (CWA or the Act) and Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

**II. PARTIES**

4. Complainant is the Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency (EPA), Region 4, who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 309(g)(2)(B) of the CWA.

5. Respondents are LKQ Corporation, and LKQ Southeast, Inc. (Respondents), corporations duly organized and existing under the laws of the State of Delaware doing business in the State of Georgia. This proceeding pertains to the Respondents' facility located at 2401 Highway 42 North, Jenkinsburg, GA 30234 (Facility).

### III. GOVERNING LAW

6. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
7. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing the EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants, including stormwater, into navigable waters subject to specific terms and conditions. The EPA has granted the State of Georgia, through the Georgia Environmental Protection Division (GAEPD), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.
8. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines a "discharge of pollutants" as "[a]ny addition of any pollutant to navigable waters from any point source . . ."
9. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines "point source" as "[a]ny discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit [or] discrete fissure . . . from which pollutants are or may be discharged."
10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as "[t]he waters of the United States, including the territorial seas."
11. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Complainant represents that the State of Georgia was provided a prior opportunity to consult with the Complainant regarding this matter.
12. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45, Complainant will provide public notice of and reasonable opportunity to comment on the proposed issuance of this CAFO prior to issuance of the Final Order.

### IV. FINDINGS OF FACTS

13. GAEPD issued the National Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Industrial Activities, Permit No. GAR050000 ("Permit"). The Permit became effective June 1, 2017 and expires on May 31, 2022. Coverage under the Permit is obtained by submitting a Notice of Intent ("NOI") to EPD.

14. On June 28, 2017, Respondents submitted an NOI to EPD requesting coverage under the Permit for the Facility. The authorization became effective on June 28, 2017, and expires on May 31, 2022, and requires Respondents to comply with all provisions of the Permit.
15. On April 28, 2021, the EPA and EPD performed a Compliance Stormwater Evaluation Inspection (CSWEI) to evaluate Respondents' management of stormwater at the Facility to assess compliance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the Permit.
16. At the conclusion of the April 28, 2021, CSWEI, the EPA submitted an Information Request Letter ("Information Request"), pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, to the Respondents' Facility to assess compliance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the Permit. On May 12, 2021, the Respondents sent a letter in response to the EPA's Information Request.
17. On July 9, 2021, the EPA issued the Notice of Violation and Opportunity to Show Cause (to the Respondents) pursuant to section 309(a) of the CWA, 33 U.S.C § 1319. On August 17, 2021, the EPA held, and Respondents participated in, a show cause meeting.
18. Based on the CSWEI of the Facility and review of the information provided in response to the Information Request and Show Cause meeting, EPA's inspectors observed the following:
  - (a) After the facility's expansion in 2019, an updated NOI was not submitted by the Respondents until April 2021. This was well after the Permit's requirement of updating the NOI prior to commencing of discharges from modifications.
  - (b) The Respondents' Stormwater Pollution Prevention Plan (SWPPP) failed to provide a schedule for housekeeping measures and inappropriately established outfalls and treatment ponds in jurisdictional waters.
  - (c) pH monitoring at the site was not performed within the timetable established by the regulations.
  - (d) The Respondents failed to meet the inspection and maintenance requirements of the Permit. Specifically, inspections did not include evaluations of all pollution sources and pollution control measures and failed to document the times of inspections and whether corrective measures were taken in response to findings.

## **V. ALLEGED VIOLATIONS**

19. At all times relevant to this action, Respondents are a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
20. At all times relevant to this action, the Respondents owned and/or operated the Facility.
21. Based on the CSWEI, information obtained from the Information Request, and information received at the show cause meeting, the EPA has determined that stormwater associated with industrial activity was discharged from the Facility within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations into waters of the United States.

22. Based on the CSWEI, the information obtained from the Information Request, and information received at the show cause meeting, the Respondents have violated Section 301 of the CWA, 33 U.S.C. § 1311, due to Respondents' failure to comply with the Permit and the CWA implementing regulations. Specifically, the EPA alleges the following violations:

- (a) Part 1.3.5 of the Permit requires the permittee to submit an updated NOI with the "change of information" box marked within thirty (30) days of any information supplied in the NOI changing during the term of the Permit. In 2019, the Facility completed its Facility expansion, resulting in a significant modification in how stormwater is discharged from the site. The Facility gained new discharge points which required the submission of an updated NOI a minimum of thirty (30) days prior to commencing discharge. The Facility failed to submit the necessary updated NOI for the changed information until April 27, 2021, which was well after the start of the discharge from the additional outfalls. This is a violation of Part 1.3.5 of the Permit.
- (b) Part 5.1 of the Permit requires the permittee to develop a Stormwater Pollution Prevention Plan (SWPPP) containing, among other elements, the following: sampling data from the previous permit (Part 5.1.3.6); a schedule for regular pick up and disposal of waste along with routine inspections for leaks and the condition of drums, tanks, and containers (Part 5.1.5.1(a)); and procedures for conducting the various types of analytical monitoring (Part 5.1.5.2). The SWPPP provided to the EPA during the inspection had an initial creation date of July 15, 2019. From the review of SWPPP, the following elements were missing: no sampling data was provided for the period prior to the current permit cycle (June 1, 2017), the section pertaining to good housekeeping measures did not include a definitive schedule, and no details were provided regarding the necessary procedures for pH analysis. Failure to include these elements in the SWPPP is a violation of Part 5.1 of the Permit.
- (c) Part 5.4 of the Permit requires the permittee to maintain inspections, monitoring, and certification records. Part 4.1.1 of the Georgia Industrial Permit requires inspections during rain events to include inspections of control measures and outfalls. Part 4.1.2 of the Georgia Permit requires that the inspection records include, among other requirements, the time and date of the inspection. The quarterly inspection records provided during the EPA's inspection did not include the time of inspection or include observations of control measures and outfalls. This is a violation of Part 5.4, Part 4.1.1, and Part 4.1.2 of the Permit.
- (d) Part 4.2.1 of the Permit requires that at least once a quarter a stormwater sample be collected at each outfall, that the sample be collected within the first thirty (30) minutes discharge, that the samples be representative of the stormwater discharge from the site, and that a visual assessment of each sample be conducted. The records of quarterly visual assessments showed the permittee failed to consistently perform visual assessments during rain events, failed to perform visual assessments at all outfalls (or rotate the observed representative outfall each quarter so that all outfalls were assessed), and failed to collect and analyze samples at each outfall representative of the stormwater discharges from the Site. This is a violation of Part 4.2.1 of the Permit.

- (e) Appendix B (14)(3) of the Permit requires all analytical methods, sampling containers, sample preservation techniques, and sample holding times be consistent with 40 C.F.R. Part 136. Part 136 identifies Standard Method 4500-H+B-2011 as the appropriate test method for pH. According to Method 4500-H+B-2021, samples should be analyzed within two (2) hours of collection. According to Facility personnel and based on a review of the monitoring records, the pH benchmark monitoring analysis was only performed by the contract laboratory upon receipt of the samples. This does not comply with the two-hour analysis time required by the method. This is a violation of Appendix B(14)(3) of the Permit.
- (f) Section 301 of the CWA, its implementing regulations at 40 C.F.R. § 122.26, and the Permit require permit coverage for discharges from all outfalls at the site. Appendix A of the Permit defines an outfall as a location where stormwater becomes a discernible, confined, and discrete conveyance that either leaves the site or becomes a point source discharging to a receiving water. With the Facility's expansion in 2019, Respondents added several sediment ponds which discharged to a preexisting pond that was identified as "Pond 8." From the EPA's preliminary jurisdictional determination, it was determined that Pond 8 is a jurisdictional water in the headwaters of Yellow Water Creek that predates Respondents' operations at the site. Several of the treatment ponds were observed with sediment laden water indicating that there was inadequate sediment removal. Therefore, the smaller sediment ponds discharging to Pond 8 were discharging to jurisdictional waters and must be identified as individual outfalls. The Facility has inappropriately used Pond 8 as a control device, inappropriately used the outfall from Pond 8 to the stream as a permitted outfall and failed to obtain permit coverage for the outfalls from sediment ponds. This is a violation of Section 301 of the CWA, 33 U.S.C. § 1311, its implementing regulations at 40 C.F.R. § 122.26, and the Permit.

## VI. STIPULATIONS

- 23. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
- 24. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondents:
  - (a) admit that EPA has jurisdiction over the subject matter alleged in this CAFO;
  - (b) neither admit nor deny the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
  - (c) consent to the assessment of a civil penalty as stated below with the understanding that Respondents are jointly and severally liable for payment of the full civil penalty amount];
  - (d) consent to the conditions specified in this CAFO;
  - (e) waive any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
  - (f) waive their rights to appeal the Final Order accompanying this CAFO.

25. For the purpose of this proceeding, Respondents:

- (a) agree that this CAFO states a claim upon which relief may be granted against Respondents;
- (b) acknowledge that this CAFO constitutes an enforcement action for purposes of considering Respondents' compliance history in any subsequent enforcement actions;
- (c) waive any rights they may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
- (d) waive any right they may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and
- (e) agree to comply with the terms of this CAFO.

26. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the parties agree to receive service by electronic means.

27. The parties acknowledge and agree that this CAFO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a proposed CAFO based on comments received during the public comment period.

## VII. TERMS OF PAYMENT

28. Respondents consent to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of \$80,000.00, which is to be paid within thirty (30) calendar days of the Effective Date of this CAFO.

29. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondents send payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

If Respondents send payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
Mail Station: SL-MO-C2-GL  
St. Louis, Missouri 63101  
Contact Number: (314) 425-1819

If paying by EFT, Respondents shall transfer the payment to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondents shall remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
Contact: Craig Steffen, (513) 487-2091  
REX (Remittance Express): 1-866-234-5681

30. Respondents shall send proof of payment, within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
R4\_Regional\_Hearing\_Clerk@epa.gov

and

Ahmad Dromgoole  
Enforcement and compliance Assurance Division  
Water Enforcement Branch  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
dromgoole.ahmad@epa.gov

31. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and "Docket No. CWA-04-2022-0307(b)."

32. Pursuant to 33 U.S.C. § 1319(g)(9), if Respondents fail to timely pay any portion of the penalty assessed under this CAFO, EPA may recover, in addition to the amount of the unpaid penalty assessed, the following amounts on any portion overdue:

(a) Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days of the Effective Date of this CAFO, Interest is waived. However, if the civil penalty is not paid in full within 30 days of the Effective Date of this CAFO, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest are paid. Interest will be assessed currently prevailing rates.

(b) Non-Payment Penalty. A 20 percent quarterly nonpayment penalty pursuant to 33 U.S.C. § 1319(g)(9); and

(c) Attorneys' Fees and Costs of Collection. The United States' attorneys' fees and costs of collection.

33. In addition to what is stated in the prior Paragraph, if Respondents fail to timely pay any portion of the penalty assessed under this CAFO, EPA may:

(a) refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13 and 13.14;

(b) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H;

(c) suspend or revoke Respondents' licenses or other privileges, or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17; and/or

- (d) request that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed, in addition to the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.
34. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.
35. Effective upon signature of this CAFO by the Respondents, the Respondents agree that the time period commencing on the date of their signature and ending on the Effective Date shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by EPA related to the matters addressed in this CAFO and that, in any action brought by EPA related to the matters addressed, the Respondents will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period.

### VIII. EFFECT OF CAFO

36. In accordance with 40 C.F.R. § 22.18(c), Respondents' full compliance with this CAFO shall only resolve Respondents' liability for federal civil penalties for the violations and facts specifically alleged above.
37. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).
38. Nothing in this CAFO shall relieve Respondents of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
39. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondents or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
40. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Administrator.
41. The provisions of this CAFO shall apply to and be binding upon Respondents and their officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns.
42. Any change in the legal status of the Respondents, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondents' obligations and responsibilities under this CAFO.

43. By signing this Consent Agreement, Respondents acknowledge that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
44. By signing this Consent Agreement, the Complainant and the undersigned representative of the Respondents each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
45. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
46. By signing this Consent Agreement, Respondents certify that the information they have supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondents acknowledge that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
47. EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that EPA finds, after signing this CAFO, that any information provided by Respondents was materially false or inaccurate at the time such information was provided to EPA. If such false or inaccurate material was provided, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondents notice of its intent to revoke, which shall not be effective until received by Respondents in writing.
48. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
49. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

#### **IX. EFFECTIVE DATE**

50. This CAFO shall become effective after execution of the Final Order by the Regional Administrator, on the date of filing with the Hearing Clerk.

The foregoing Consent Agreement In the Matter of LKQ Corporation, et al., Docket No. CWA-04-2022-0307(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENTS:

<u>Walter Hanley</u>	<u>November 11, 2022</u>
Signature	Date
Printed Name: <u>Walter Hanley</u>	
Title: <u>Vice President</u>	
Address: <u>500 W. Madison Street, Ste. 2800, Chicago, IL 60661</u>	

The foregoing Consent Agreement In the Matter of LKQ Corporation, et al., Docket No. CWA-04-2022-0307(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

\_\_\_\_\_ for

Carol L. Kemker  
Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

LKQ CORPORATION, AND  
LKQ SOUTHEAST, INC.,

Respondents.

Docket No. [CWA-04-2022-0307(b)]

FINAL ORDER

The Regional Administrator is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondents. 40 C.F.R. §22.4(b) and §22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified, and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

The Respondents are hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED.**

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Daniel Blackman  
Regional Administrator

## CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, in the Matter of LKQ Corporation, et al., Docket No. CWA-04-2022-0307(b), were filed and copies of the same were emailed to the parties as indicated below.

**Via email to all parties at the following email addresses:**

To Respondents:     David L. Rieser  
                              K&L Gates, LLP  
                              David.rieser@klgates.com  
                              70 West Madison Street  
                              Chicago, IL 60602  
                              312-807-4359

To EPA:                 Ahmad Dromgoole, Environmental Engineer  
                              Dromgoole.ahmad@epa.gov  
                              404-562-9212

Jay Khuti, Associate Regional Counsel  
khuti.jay@epa.gov  
404-562-8390

U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

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Shannon L. Richardson, Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960